HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.1018, 1019, 1022, 1023, 1024, 1025 and 1026 of 2005

Writ Appeal No. 1018 of 2005

Between:

The General Manager, South Central Railway,
Rail Nilayam Secunderabad and another

... Appellants

And

The Controlling Authority under the Payment of Gratuity Act, the Asst. Labour Commissioner (Central), Hyderabad and another

... Respondents

Writ Appeal No. 1019 of 2005

Between:

The General Manager, South Central Railway,
Rail Nilayam Secunderabad and another

... Appellants

And

The Controlling Authority under the Payment of Gratuity Act, the Asst. Labour Commissioner (Central), Hyderabad and another

... Respondents

Writ Appeal No. 1022 of 2005

Between:

The General Manager, South Central Railway,
Rail Nilayam Secunderabad and another

… Appellants

And

The Controlling Authority under the Payment of Gratuity Act, the Asst. Labour Commissioner (Central), Hyderabad and another

… Respondents

Writ Appeal No. 1023 of 2005

Between:

The General Manager, South Central Railway, Rail Nilayam Secunderabad and another

… Appellants

And

The Controlling Authority under the Payment of Gratuity Act, the Asst. Labour Commissioner (Central), Hyderabad and another

… Respondents

Writ Appeal No. 1024 of 2005

Between:

The General Manager, South Central Railway, Rail Nilayam Secunderabad and another

… Appellants

And

The Controlling Authority under the Payment of Gratuity Act, the Asst. Labour Commissioner (Central), Hyderabad and another

… Respondents

Writ Appeal No. 1025 of 2005

Between:

The General Manager, South Central Railway, Rail Nilayam Secunderabad and another

… Appellants

And

The Controlling Authority under the Payment of Gratuity Act, the Asst. Labour Commissioner (Central), Hyderabad and another

… Respondents

Writ Appeal No. 1026 of 2005

Between:

The General Manager, South Central Railway, Rail Nilayam Secunderabad and another

… Appellants

And

The Controlling Authority under the Payment of Gratuity Act, the Asst. Labour Commissioner (Central), Hyderabad and another

… Respondents

::COMMON JUDGMENT::

Counsel for the appellants : Shri T.S. Venkata Ramana

Counsel for respondent No. 1 : Shri A. Rajasekhar Reddy, Assistant Solicitor General

Counsel for respondent Nos. 2 : Shri A.K. Jayaprakash Rao

December 20, 2006

Per G.S. Singhvi, CJ

These appeals are directed against order dated 06-04-2005 passed by the learned Single Judge, whereby he dismissed Writ Petition Nos.15799, 15844, 15809, 15843, 15659, 15779 and 16330 of 2004 filed by the appellants for quashing the orders passed by the Controlling Authority constituted under the Payment of Gratuity Act and Assistant Labour Commissioner (Central), Hyderabad (respondent No. 1 herein).

For the sake of convenient reference, we have taken the facts from the paper book of Writ Appeal No.1018 of 2005.

Sri Durgaiah Ramaiah (respondent No.2 in the writ appeal) filed an application under Section 7 of the Payment of Gratuity Act, 1972 (for short, 'the 1972 Act') read with Rule 10(1) of the Payment of Gratuity (Central) Rules, 1972 (for short, 'the Rules') claiming gratuity for the period during which he worked as a casual employee with South Central Railway. He pleaded that he was initially appointed as casual employee and subsequently his services were regularised, but he was not paid gratuity for the period of casual employment. The appellants contested the claim of respondent No.2. In the counter affidavit filed on their behalf, it was averred that respondent No.2 does not fall within the definition of the term 'employee' under Section 2(e) of the

1972 Act and that he comes within the definition of the term 'railway servant' under Section 2(34) of the Railways Act, 1989 (for short, 'the 1989 Act'), and, as such, he is entitled to gratuity at par with other Railway servants and the application filed by him for payment of gratuity under the 1972 Act is not maintainable.

After hearing the representatives of the parties, respondent

No.1 passed order dated 29-6-2004, whereby he directed the appellants to pay a sum of Rs.21,662/- towards the balance of gratuity with simple interest at the rate of 10% from the date of his superannuation to the date of payment.

Similar orders were passed in the cases of other workmen.

The appellants challenged the orders passed by respondent No.1 by filing writ petitions under Article 226 of the Constitution of India, which were dismissed by the learned Single Judge by a common order on the ground of availability of alternative remedy of appeal.

Shri T.S. Venkata Ramana fairly conceded that the remedy of appeal is available to his clients against the order passed by respondent No.1, but submitted that in view of the jurisdictional issues raised in the writ petition, the learned Single Judge should not have relegated them to the remedy of appeal. Learned counsel submitted that the applications filed by the workmen under Section 7 of the 1972 Act were not maintainable because, being railway servants within the meaning of Section 2(34) of the 1989 Act, they are not covered by the definition of the term 'employee' under Section 2(e) of the 1972 Act. He then argued that respondent No. 1 did not have the jurisdiction, power or authority to entertain the applications filed by them under Section 7 of the 1972 Act. He emphasised that even though this point was specifically raised before the learned Single Judge, the same has not been considered. Learned counsel also relied on the judgment of the Supreme Court in **Union of India v. Manik Lal Banerjee**[1] and argued that in view of the authoritative pronouncement of the Supreme Court, the orders passed by respondent No. 1 are liable to be quashed.

Shri A.K. Jayaprakash Rao, learned counsel for the respondents – workmen supported the order under challenge and argued that in the absence of any extraordinary reason, this Court can not deviate from the settled rule that the High Court will not entertain writ petition if an effective alternative remedy is available to the petitioner. Learned counsel also relied on Circular No.167/2000, dated 11-8-2000 issued by the Railway Board and submitted that the workmen are entitled to payment of gratuity under the 1972 Act in respect of the period during which they worked as casual labour. He submitted that casual employees cannot be treated as holding any post under the 1989 Act and, therefore, the applications filed by the workmen under the 1972 Act were rightly entertained by respondent No.1.

We have given serious thought to the respective arguments. In our opinion, the view taken by the learned Single Judge on the issue of availability of alternative remedy to the appellants does not suffer from any infirmity. Rather, the same is in consonance with the law laid down by the Supreme Court in **A.V. Venkateshwaran v. R.S. Wadhwani**[2], **Thansingh Nathmal v. Superintendent of Taxes**[3], **Baburam v. Zilla Parishad**[4], **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd. v. Government of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics &**

Chemicals Ltd.,[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.,**[14] **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[15] and **Assistant Collector, Central Excise v. Dunlop India Ltd.**[16] There are three well recognised exceptions to the rule of alternative remedy. The High Court can entertain writ petition despite the availability of alternative remedy to the petitioner if the action complained of is shown to be vitiated due to violation of the rules of natural justice or the action has been taken under a statute which has already been declared unconstitutional or where the action taken by the State of public authority is grossly violative of the fundamental rights of the petitioner. The appellants' case does not fall in either of these exceptions. Therefore, we do not see any reason to depart from the rule of alternative remedy.

We may add that the remedy of appeal under Section 7(7) of the 1972 Act to an aggrieved person is an effective alternative remedy, because it forms part of the scheme of the statute under which a workman can make an application for payment of gratuity.

Before departing from this aspect of the matter, we consider it necessary to mention that the workmen's claim for payment of gratuity under the 1972 Act relates to the period during which they worked as casual labour and not in relation to their post-regular appointment.

In the premise aforesaid, we hold that the learned Single Judge did not err by declining to entertain the appellants' prayer for setting aside the order passed by respondent No. 1.

The judgment of the Supreme Court in **Manik Lal Banerjee's**

case (supra), on which reliance has been placed by the learned counsel, does not have any bearing on the adjudication of the issue raised in these appeals because,

(i) the Supreme Court did not consider the issue of availability of alternative remedy to the aggrieved party against an order under Section 7 of the 1972 Act and

(ii) their Lordships of the Supreme Court did not consider whether or not a person who is a casual labour falls within the ambit of Section 2 (e) of the 1972 Act.

In the result, the appeals are dismissed. However, liberty is given to the appellants to avail the remedy of appeal under Section 7(7) of the 1972 Act and raise all legally permissible objections against the orders passed by respondent No. 1.

As a sequel to dismissal of the appeals, WAMP Nos.1915, 1935, 1916, 1936, 1919, 1941, 1920, 1940, 1921, 1939, 1922, 1938, 1923 and 1934 of 2006 filed by the appellants for interim reliefs are also dismissed and interim orders dated 17-05-2005 and 24-05-2005 are vacated.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

December 20, 2006
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[1] AIR 2006 SC 2844

[2] AIR 1961 SC 1506

[3] AIR 1964 SC 1419

[4] AIR 1969 SC 556

[5] AIR 1970 SC 645

[6] AIR 1970 SC 1980

[7] (1972) 4 SCC 379

[8] (1975) 4 SCC 378

[9] AIR 1988 SC 66

[10] (1999) 4 SCC 43

[11] (2001) 6 SCC 634

[12] (2002) 1 SCC 216

[13] (2003) 2 SCC 107

[14] (2004) 3 SCC 553

[15] (1983) 2 SCC 433

[16] (1985) 1 SCC 260